

**Fw: EPA Superfund in San Juan County**

**Jennifer Lane** to: forrest.sabrina, nabors.barbora

09/14/2011 10:03 AM

From: Jennifer Lane/R8/USEPA/US

To:

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see below

-----Forwarded by Jennifer Lane/R8/USEPA/US on 09/14/2011 10:03AM -----

To: Jennifer Lane/R8/USEPA/US@EPA

From: "John H. Wright" <wrightjo@frontier.net>

Date: 09/12/2011 11:19AM

Subject: EPA Superfund in San Juan County

Ms Lane,

I am a resident of San Juan County, and have these points to make with regard to EPA establishing a Super Fund site in the upper Cement Creek area above Gladstone:

1. Before consideration proceeds, EPA should declare what it believes is the natural state of contamination of the creek at its confluence with the Animas River, sans man-made contamination. San Juan County Commissioner Kuhlman was correct to raise the question in the recent Animas River Stakeholders meeting which EPA attended in Silverton. He is, of course, referring to the contamination of the creek brought on by natural drainage off the red mountains rimming the basin. The point of the declaration goes to assessing what therefore might be the goals of Superfund activity, and are they reasonable and realistic?
2. EPA should declare at what mile downstream from that confluence the Animas waters presently clean themselves up to the point that it supports aquatic life for native species. Comments from the floor of the meeting in Silverton stated that the Animas water in Durango was "good." The comment was uncontested. Therefore, that mile point exists somewhere between Durango and Silverton. Next, EPA should declare how far upstream that point may move if the Super Fund proposed work is successful. These declarations go to assessing the cost-benefit aspects of the proposed work.
3. EPA should declare what it expects are the scope and costs of the proposed Super Fund activity.
4. EPA should declare what its specific source of funding for the proposed activity will be.
5. Given satisfactory answers to the above points, I would be in a position to declare myself whether I were for, or against Super Fund activity in the described area. At present, I do not have that information and therefore I am against it because the present situation does not seem to represent imminent danger.

During the meeting in Silverton, BLM representatives stated it had done reclamation work on several inactive mines in San Juan County. I am familiar with some of those projects. While BLM in fact did conduct reclamation work, that does not mean it did a good job. In fact I have observed where BLM and State of Colorado work destroyed assets in San Juan County, created new environmental problems, and impending ones. So I am leery of what might be the legacy of EPA Superfund work.

I am concerned about EPA's proposed source of funding, and I want it specifically spelled out as to who pays. I want that beforehand. Who are the "potentially liable parties?" Super Fund history has shown it will hold modern mine claim

owners liable for activity of previous mine owner-operators. I am deeply disturbed by that kind of muscle. Article 1, Section 9, Paragraph 3 of the US Constitution states Congress shall pass no bill of attainder or ex-post facto law. Seems to me that CERCLA does in fact attaint many modern claim owners with the activity of previous claim owners for wrongs that were not at the time illegal. So, as you identify your "potentially liable parties" you should declare why they are not in fact so attainted.

In that very room where we met in Silverton Town Hall recently, but in the year 1984, then attorney Ed Ruland (Dufford, Waldeck, Ruland, et al from Grand Junction, later appellate court judge for the State of Colorado) spoke to a meeting of the Colorado Mining Association on the ramifications of CERCLA. While he did describe it as a particularly "vicious" piece of legislation, he also added a pertinent piece of evidence that relates to the current discussion, and to Commissioner Kuhlman's cogent question. Ed, at the time, was describing an aspect of a CERCLA action against Federal Resources and the Camp Bird Mine in Ouray County. At issue was the absence of a baseline environmental study in the area. Of course such studies were not required in the yesteryear when the Camp Bird started up. But there was introduced an important piece of evidence from the Journals of Dominguez and Escalante who, in 1776 or thereabouts, passed through what is now known as the Ironton Park area... the other side of the mountain from upper Cement Creek where the current discussion focuses. Quoting from their record, Ruland explained that once reaching Ironton Park, they decamped in short order complaining that "the water is bitter to drink, and there are no fish in it." That is the closest thing to an environmental baseline study that I know of, and it begs EPA to answer what is reasonable and realistic?

Sincerely,  
John H. Wright

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